

- (2) Examples.
  - (b) Active conduct of a trade or business defined.
    - (1) In general.
    - (2) Active conduct of a trade or business immediately after distribution.
      - (i) In general.
      - (ii) Trade or business.
      - (iii) Active conduct.
      - (iv) Limitations.
    - (3) Active conduct for five-year period preceding distribution.
    - (4) Special rules for acquisition of a trade or business (Prior to the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).
      - (i) In general.
      - (ii) Example.
      - (iii) Gain or loss recognized in certain transactions.
      - (iv) Affiliated group.
    - (5) Special rules for acquisition of a trade or business (After the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).
  - (c) Examples.

## § 1.355-4 NON PRO RATA DISTRIBUTIONS, ETC.

## § 1.355-5 RECORDS TO BE KEPT AND INFORMATION TO BE FILED.

## § 1.355-6 [RESERVED]

[T.D. 8238, 54 FR 289, Jan. 5, 1989]

**§ 1.355-1 Distribution of stock and securities of a controlled corporation.**

(a) *Effective date of certain sections.* Sections 1.355-1 through 1.355-4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355-1 through 1.355-4 (revised as of April 1, 1987). Sections 1.355-1 through 1.355-4 do not reflect the amendments to section 355 made by the Revenue Act of 1987 and the Technical and Miscellaneous Revenue Act of 1988.

(b) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to (or the inclusion in income of) the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation (the "distributing corporation"). It applies only to the separation of existing businesses that have been in active operation for at least five years (or a business that has been in active operation for at least five years into separate businesses), and which, in general, have been owned, directly or indi-

rectly, for at least five years by the distributing corporation. A separation is achieved through the distribution by the distributing corporation of stock, or stock and securities, of one or more subsidiaries (the "controlled corporations") to its shareholders with respect to its stock or to its security holders in exchange for its securities. The controlled corporations may be preexisting or newly created subsidiaries. Throughout the regulations under section 355, the term *distribution* refers to a distribution by the distributing corporation of stock, or stock and securities, of one or more controlled corporations, unless the context indicates otherwise. Section 355 contemplates the continued operation of the business or businesses existing prior to the separation. See § 1.355-4 for types of distributions that may qualify under section 355, including pro rata distributions and non pro rata distributions.

(c) *Stock rights.* Except as provided in § 1.356-6T, for purposes of section 355, the term *securities* includes rights issued by the distributing corporation or the controlled corporation to acquire the stock of that corporation. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain distributions occurring in connection with a transaction described in section 355. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (c) applies to distributions occurring on or after March 9, 1998.

[T.D. 8238, 54 FR 289, Jan. 5, 1989, as amended by T.D. 8752, 63 FR 410, Jan. 6, 1998]

**§ 1.355-2 Limitations.**

(a) *Property distributed.* Section 355 applies to a distribution only if the property distributed consists solely of stock, or stock and securities, of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered) is received, see section 356.